PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 27, 2006 Agenda ID # 5262
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 04-04-003

This is the draft decision of Administrative Law Judge (ALJ) Mark Wetzell. It replaces and supersedes the draft decision that was issued on January 12, 2006. It will appear on the Commission's February 16, 2006 agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f), comments on the draft decision must be filed by February 7, 2006 and no reply comments will be accepted.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Mark Wetzell at msw@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner and the ALJ, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ WETZELL (Mailed 1/27/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

OPINION ON PETITION OF PACIFIC GAS AND ELECTRIC COMPANY FOR MODIFICATION OF DECISION 05-10-042

1. Summary

The petition of Pacific Gas and Electric Company (PG&E) for modification of Decision (D.) 05-10-042 is granted. The decision ordered implementation of the Commission's resource adequacy requirements (RAR) policy framework and, among other things, adopted a proposed prohibition on reselling and re-trading import capacity. This decision lifts that prohibition so that load-serving entities (LSEs) are authorized to engage in such transactions, which may lead to more effective use of import capacity.

2. Background

Under the Commission's RAR program, the three large California investor-owned electric utilities (IOUs) as well as electric service providers (ESPs) and community choice aggregators (CCAs) (collectively, LSEs) are required to demonstrate that they have acquired the capacity needed to serve their forecast retail customer load and a 15-17% reserve margin. The program

begins with "year-ahead" RAR compliance filings for the period that begins in June 2006.[1]

In a prior decision in the first RAR phase of this proceeding (D.04-10-035), the Commission addressed the extent to which an LSE's acquired resources can qualify towards meeting that LSE's RAR obligations. Among other things, it determined that qualifying resources must pass certain "deliverability" screens that were to be developed in Phase 2. D.04-10-035 adopted a proposal by the California Independent System Operator (CAISO) to conduct a baseline analysis to determine the deliverability of qualifying resources, and it directed that consideration of alternatives for allocating import capacity among LSEs be taken up in the second RAR phase of this rulemaking. (D.04-10-035, pp. 31-32.)

D.05-10-042 adopted the third of three alternative proposals that were identified in the Phase 2 Workshop Report for allocating the CAISO-determined level of import capacity to LSEs. The decision described the adopted Option 3 as follows:[2]

> 3. Allocate import capacity according to each LSE's share of CAISO system peak load. LSEs would assign their total intended RAR use to specific import paths and provide

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[1] D.05-10-042 provided that the compliance filings were to be filed on January 27, 2006. By letter dated January 20, 2006 the Executive Director approved an extension of time for the filings until 10 business days from the date the California Independent System Operator provides notification to LSEs regarding intertie capacity allocations.

[2] Option 3 was presented as a straw proposal by Southern California Edison Company (SCE), which was in turn based on a proposal by FPL Energy. When it presented Option 3, SCE stated that it "offers the following alternative means of resolving import capacity accounting issues for RAR. We invite comment, and do not, at this time, represent this as an SCE recommended approach, but rather as a [sic] alternative with desirable properties that we are considering, as should others." (Phase 2 Workshop Report, supplemental appendix served by Energy Division e-mail dated June 17, 2005.)

> that information to the CAISO. The CAISO would then determine if the LSE's shares are feasible. If the CAISO determines that the allocation on a particular path is not feasible to meet a local requirement, then it would allocate first based on 'evergreen' priority, and then based on the load share percentage. LSEs could trade and sell their load share provision on a path in advance of the determination for feasibility, but reselling or re-trading would not be allowed. (D.05-10-042, p. 56. Underlining added.)

3. PG&E's Petition

PG&E filed its petition seeking modification of D.05-10-042 on December 19, 2005, following a December 9 Energy Division workshop on RAR compliance during which problems with the reselling/re-trading restriction were discussed. PG&E requests that the restriction on reselling and re-trading import capacity be eliminated. PG&E believes that there is no reason to restrict resale or re-trading, and that permitting LSEs to resell and re-trade their allocations will optimize use of available import capacity and therefore further RAR goals.

The Alliance for Retail Energy Markets (AReM), Californians for Renewable Energy, Inc. (CARE), the Division of Ratepayer Advocates, Powerex Corp., San Diego Gas & Electric Company, SCE, the Utility Reform Network, and the Western Power Trading Forum (WPTF) filed timely responses to PG&E's petition.[3] Each of these parties except CARE supports PG&E's petition.

CARE contends that good cause and sound reasons exist to restrict the resale or re-trading of import capacity by IOUs. Based on its allegation that PG&E received excess profits for short-term energy sales in 2000 and 2001, CARE

[3] By ruling dated December 23, 2005, the Administrative Law Judge (ALJ) granted PG&E's request to shorten time for responses to the petition to January 5, 2006.

asserts that "there exists no evidence that there is any reason not to restrict resale or re-trading of import allocations by PG&E, at this time." (Response and Objections of CARE, p. 7.)

4. Discussion

PG&E's petition and the responses to it reveal that the concerns about market power that led SCE to include the prohibition on reselling and re-trading import capacity in its straw proposal have been resolved. SCE states in its response to the petition that "[i]n light of the other measures instituted by the Commission in [D.05-10-042], there is no need for the restriction." (SCE's response, p. 7.) However, CARE (which has not heretofore participated in the RAR portion of this proceeding) believes that we should either preserve the prohibition for IOUs or adopt an as-yet undefined mitigation mechanism.[4] Although CARE points to the high wholesale energy prices of 2000-2001 as support for its position, we do not find a nexus between those high prices and the contention that IOUs in general or PG&E in particular will have and exploit market power if they are permitted to resell or re-trade import capacity allotments. On the contrary, we are persuaded that the restriction is not necessary, and that it may lead to suboptimal use of import capacity. We will therefore remove it. Also, at this time we do not see a need for a mitigation

[4] CARE apparently limits the applicability of its proposal for preserving the prohibition on reselling/re-trading import capacity to IOUs, *i.e.,* it does not propose that the prohibition be continued as to ESPs and CCAs.

mechanism as CARE proposes, and in any event we are presented with no specific proposal for such a mechanism.[5]

PG&E proposes to accomplish removal of the restriction by changing the decision's description of Option 3. This description was drawn from the Phase 2 Workshop Report, and PG&E in effect asks that we rewrite that report and the underlying proposal. We will take a different approach by leaving the description of Option 3 unchanged and instead add language to the discussion at page 57 that indicates we are adopting Option 3 as modified to eliminate the prohibition on reselling and re-trading import capacity. In addition, we will delete language that was associated with adoption of the reselling/re-trading restriction. Finally, we note that PG&E proposes modification of Finding of Fact 28, but it is apparent that Finding of Fact 26, not 28, should be modified.[6]

WPTF believes that there is a "minor ambiguity" in the petition regarding who can participate in the trading and re-sales. Specifically, WPTF notes that it is not clear whether the sales, trading, re-sales, and re-trades that would be allowed are limited to LSEs or open to all market participants. WPTF suggests that it be the latter, and proposes that PG&E's proposed addition to Finding of

[5] In its response, Powerex discussed the concept of a price cap on import capacity. Powerex proposed as "a starting point for discussion" a cap set at the average of the maximum tariff rates for long-term transmission filed by transmission providers in the WECC, excluding CAISO. We do not consider such a "starting point" proposal to have been sufficiently vetted to be ready for adoption. That being said, we concur with the underlying policy concern of Powerex that the authority given to LSEs to resell and re-trade import capacity allocations is intended to promote efficient use of such capacity and not to confer upon LSEs an opportunity for mere economic gain.

[6] PG&E's attorney confirmed this with the ALJ.

Fact 26 be modified to read as follows (underlining indicates language proposed by WPTF):

> Import allocations may be traded, sold, re-traded and resold by and among all market participants.

WPTF states that it has had informal discussions with PG&E and that PG&E would not oppose such a clarification. As WPTF points out, it is understood that the PG&E proposal does not relate to actual transmission rights at inter-ties but rather to the allocation of such capacity for the purpose of what an LSE can count towards its RAR. According to WPTF, if trading of inter-tie capacity were available to all market participants, for example, an importer could not only sell capacity and energy to an LSE, but also a guarantee the LSE could count the entire import quantity because the importer had obtained the "counting rights" at an inter-tie. We concur that this could be a beneficial market efficiency and will therefore adopt it.

5. Comments on Draft Decision

The draft decision was issued for comment on January 27, 2006.[7] Pursuant to direction in the ALJ's December 23, 2005 ruling shortening the time for responses to the petition, PG&E filed a motion for a determination that "public necessity" exists within the meaning of Rule 77.7(f)(9) of the Rules of Practice and Procedure and justifies shortening the public comment period on the draft decision. PG&E explains that LSEs need to know whether they are permitted to

[7] An earlier version of the draft decision was issued for comment on January 12, 2006. The draft decision was reissued with revisions to acknowledge that CARE filed a response to PG&E's petition and to address the issues raised by CARE. CARE is hereby reminded and admonished that the procedural rules governing this proceeding require that the assigned ALJ be served with a hard copy (as well as e-mail) of all filings (Order Instituting Rulemaking, April 1, 2004, Appendix A, p. 1.)

trade some or all of their allotted Intertie Load Share to another LSE prior to making their RAR compliance filings. In the absence of a timely decision, available intertie capacity may not be used efficiently. Although the actual dates referenced in PG&E's motion are no longer applicable due to the approved extension of time, the underlying principle remains. We therefore determine that public necessity requires a waiver of the 30-day public review and comment period. Comments on the draft decision were filed by _____.

Findings of Fact

1. There is no need to continue the restriction on reselling and re-trading import capacity, and the restriction could lead to suboptimal use of import capacity.

2. LSEs have a need to know whether they are permitted to trade some or all of their allotted Intertie Load Share to another LSE prior to making their RAR compliance filings.

Conclusions of Law

1. The prohibition on reselling and re-trading import capacity should be eliminated.

2. D.05-10-042 should be modified to the extent provided herein.

3. The public interest in the issuance of this decision before the expiration of the full 30-day public review and comment period clearly outweighs the public interest in having the full 30-day period, and PG&E's motion for determination of public necessity should therefore be granted.

O R D E R

IT IS ORDERED that:

1. The December 19, 2005 petition of Pacific Gas and Electric Company (PG&E) for modification of Decision (D.) 05-10-042 is granted to the extent provided herein.

2. D.05-10-042 is modified as follows:

   a. The first sentence of the last paragraph at page 57 is modified to read as follows (additional language is underlined):

   It is also our judgment that the third option is the most appropriate approach for allocating import capability among LSEs, provided, however, that we will not adopt the proposed restriction on reselling and re-trading import capacity rights.

   b. The last sentence of the last paragraph at page 57 is modified to read as follows (deleted language is struck through):

   We note that it avoids the problem of LSEs with unneeded allocations withholding unused capacity ~~as well as market power issues that could be associated with a secondary market for import capacity rights~~.

   c. Finding of Fact 26 is modified to read as follows (additional language is underlined):

   The third option for allocating to LSEs the CAISO-determined level of import capacity, which uses each LSE's share of CAISO system peak load and includes an evergreen (grandfather) priority, is reasonable and should be adopted, provided, however, that import allocations may be traded, sold, re-traded and resold by and among all market participants.

3. PG&E's December 29, 2005 motion for a determination of "public necessity" within the meaning of Rule 77.7(f)(9) is granted.

This order is effective today.

Dated _____, at San Francisco, California.